UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MERGIM DEMHASAJ

Plaintiff,

-against-

POLICE OFFICERS JOHN RIVERA, (shield no. 452); CLIFFORD STRONG, FRANCIS COLLADO, DUDLEY EWALD, MIKE CIVIL, (shield nos. unknown) *individually and in their official capacities*

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, MERGIM DEMHASAJ, by and through his attorney, **KENNETH F. SMITH, PLLC**, complaining of the defendants herein, respectfully shows the Court and alleges:

PRELIMINARY STATEMENT

1. This is a civil rights action in which plaintiff seeks relief for violation of plaintiff's rights as secured by 42 U.S.C. §§ 1981, 1983 and 1988; and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York.

2. Plaintiff's claims arise from an incident that took place on or about April 1, 2014, approximately 7:45pm, at 199 Bay 17 Street in Brooklyn, NY during which members of the New York City Police Department ("NYPD") subjected plaintiff to, among other things: Unlawful Entry, Unlawful Search, Unlawful Seizure, False Arrest, Fabrication of Evidence, Malicious Prosecution and Failure to Intervene.

3. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorney's fees, pursuant to 42 U.S.C. § 1988, and such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

4. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981 and 1983.

5. Plaintiff further invokes this court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all parties that are so related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy.

6. Venue herein is proper for the United States District Court for the Eastern District of New York under 28 U.S.C. §1391 (a), (b) and (c), in that a substantial part of the events giving rise to the claim occurred within the boundaries of the Eastern District of New York.

JURY DEMAND

7. Plaintiff demands a trial by jury in this action.

PARTIES

8. Plaintiff MERGIM DEMHASAJ is a resident of Kings County, New York State.

9. Plaintiff is a twenty-three year old male.

10. Defendants Police Officers ("POs") JOHN RIVERA, (shield no. 452); and CLIFFORD STRONG, FRANCIS COLLADO, DUDLEY EWALD, MIKE CIVIL "JOHN DOES" are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents of the City of New York and/or the New York City

Police Department ("NYPD"), a municipal agency of the City of New York. Defendants Rivera and John Does nos. 1—4 are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of the City of New York, were acting for, and on behalf of, and with the power and authority vested in them by the CITY and the NYPD, and were otherwise performing and engaging in conduct incidental to the performance of their lawful functions in the course of their duties.

11. The defendant police officers are sued in their individual and official capacities.

STATEMENT OF FACTS

12. On April 1, 2014, approximately 7:45PM, plaintiff heard commotion and activity outside the 199 Bay 17 Street apartment where plaintiff was visiting. Plaintiff opened the front door to look outside and observed apparent law enforcement activity including several individuals were being detained by police.

13. Plaintiff closed the front door and returned to the apartment where he was visiting.

14. Defendant officers then forcibly entered the apartment without either a search warrant or a lawful exception to the search warrant requirement and arrested plaintiff without probable cause.

15. Defendant officers seized a quantity of U.S. currency from plaintiff, which was later vouchered for "forfeiture".

16. Plaintiff was transported to a police precinct for processing.

17. Plaintiff was then transported to central booking.

18. Plaintiff was arraigned and charged in a criminal court complaint with the two Class "A" misdemeanor crimes of Attempted Tampering with Physical Evidence and Resisting Arrest under New York Penal Law Sections 110/215.40(2) and 205.30.

19. Plaintiff, who by then had spent almost twenty-four hours deprived of his liberty, was then released on his recognizance.

20. Plaintiff was required to appear in court numerous times between April 1, 2014 and December 16, 2014, the date on which the charges against plaintiff were dismissed and sealed.

GENERAL ALLEGATIONS

21. The individual defendants acted in concert in committing the above-described acts against plaintiff.

22. Plaintiff did not possess any contraband at any time during the above-described incidents.

23. Plaintiff did not resist arrest at any time during the above-described incidents.

24. Plaintiff did not tamper with or attempt to tamper with any "evidence" at any time during the above described incidents.

25. Defendant police officers unlawfully stopped plaintiff, without reasonable cause that he had committed any crimes, illegally searched plaintiff, without reasonable cause to believe he possessed contraband or weapons, exercised unlawful and excessive force against plaintiff, and illegally arrested plaintiff with no probable cause to believe that he had committed any crimes or violations.

26. The individual defendant officers acted under pretense and color of state law in their individual and official capacities and within the scope of their employment. Said

acts by said defendant officers were beyond the scope of their jurisdiction, without authority or law, and in abuse of their powers, and said defendant officers acted maliciously, willfully, knowingly, and with the specific intent to deprive plaintiff of her rights.

27. Upon information and belief, there exists an official NYPD policy requiring that a supervising officer approve arrests made by non-supervisory officers.

28. Upon information and belief, there exists an official NYPD policy requiring that arrest paperwork (and/or paperwork generated in connection with the arrest of a person) be signed and/or otherwise approved by a supervising officer.

29. As a direct and proximate result of defendants' actions, plaintiff experienced personal and physical injury, pain and suffering, loss of liberty, fear, an invasion of privacy, psychological pain, emotional distress, mental anguish, embarrassment, humiliation, and financial loss.

30. Plaintiff is entitled to receive punitive damages from the individual defendants because the individual defendants' actions were motivated by extreme recklessness and indifference to plaintiff's rights.

FIRST CLAIM
(UNLAWFUL SEARCH AND SEIZURE UNDER FEDERAL LAW)

31. Plaintiff repeats and realleges all the foregoing paragraphs as if the same were fully set forth at length herein.

32. On the above incident date, defendant police officers unlawfully detained, stopped, frisked, patted down, and searched, plaintiff without either reasonable suspicion that plaintiff was committing a crime or probable cause to believe plaintiff had committed a crime.

33. Additionally defendant officers unlawfully seized property from plaintiff.

34. Accordingly, defendant officers are liable to plaintiff for unlawful search and seizure under 42 U.S.C. § 1983; and the Fourth and Fifth Amendments to the United States Constitution.

SECOND CLAIM
(FALSE ARREST UNDER FEDERAL LAW)

35. Plaintiff repeats and realleges all the foregoing paragraphs as if the same were fully set forth at length herein

36. On the above incident date, defendant officers falsely arrested plaintiff without an arrest warrant, probable cause, or any reasonable suspicion that plaintiff had committed or was in the process of committing a crime.

37. Accordingly, defendant officers are liable to plaintiff for false arrest under 42 U.S.C. § 1983; and the Fourth and Fifth Amendments to the United States Constitution.

THIRD CLAIM
(FAILURE TO INTERVENE UNDER FEDERAL LAW)

38. Plaintiff repeats and realleges all the foregoing paragraphs as if the same were fully set forth at length herein.

39. On the above described incident date, some of the defendant officers did not have direct contact with plaintiff but had a reasonable opportunity to observe and to prevent the violations of plaintiff's constitutional rights, but they failed to intervene.

40. Accordingly, those defendant officers are liable to plaintiff for failing to intervene to prevent the violation of plaintiff's constitutional rights.

FOURTH CLAIM
(FABRICATION OF EVIDENCE UNDER FEDERAL LAW)

41. Plaintiff repeats and realleges all the foregoing paragraphs as if the same were fully set forth at length herein.

42. Defendant officers are liable to plaintiff because, on the above described incident date, they intentionally conspired to fabricate evidence against plaintiff, depriving plaintiff of liberty without due process of law.

43. Furthermore, defendant officers violated the law by making false statements by drafting and/or signing sworn complaints and false police reports.

44. Furthermore, the defendant officers violated the law by manipulating evidence to attempt to obtain a prosecution and unjust conviction, while performing the function of investigators.

45. Defendant officers were on notice that creating fabricated evidence is a clear violation of law because it well established that individuals who knowingly use false evidence at trial to obtain a conviction act unconstitutionally and that this is redressable in an action for damages under 42 U.S.C. § 1983.

46. Defendant officers are also liable to plaintiffs because they intentionally created false information likely to influence a fact finder's or jury's decision by, inter alia, forwarding false information to prosecutors, drafting and signing a sworn criminal court complaint and police reports, omitting and/or manipulating evidence, fabricating testimony and evidence, suppressing and concealing exculpatory material and evidence, and forwarding and presenting false information to a prosecutor and/or a court thereby violating plaintiffs' constitutional right to a fair trial, and the harm

occasioned by such an unconscionable action is redressable in an action for damages under 42 U.S.C. § 1983.

47. Accordingly, defendant police officers are liable to plaintiff for fabrication of evidence pursuant to 42 U.S.C. § 1983; and the Fifth and Sixth Amendments to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands a jury trial and the following relief, jointly and severally against the defendants:

a. Compensatory damages in the amount of One Million Dollars ($1,000,000);

b. Punitive damages in the amount of Two Million Dollars ($2,000,000);

c. Costs, interest and reasonable attorney's fees, pursuant to 42 U.S.C. § 1988; and,

d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: Brooklyn, New York
May 12, 2015

[signature]

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